

## § 4231.9

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in less than 120 days after filing the notice will cause harm to participants or beneficiaries of the plans involved in the transaction;

(2) The PBGC determines that the transaction complies with the requirements of section 4231 of ERISA; or

(3) The PBGC completes its review of the transaction.

[63 FR 24421, May 4, 1998, as amended at 68 FR 61356, Oct. 28, 2003]

### § 4231.9 Request for compliance determination.

(a) *General.* The plan sponsor(s) of one or more plans involved in a merger or transfer, or the duly authorized representative(s) acting on behalf of the plan sponsor(s), may file a request for a determination that the transaction complies with the requirements of section 4231 of ERISA. The request must contain the information described in paragraph (b) or (c) of this section, as applicable.

(1) *The place of filing.* The request must be delivered to the address set forth in § 4231.8(c).

(2) *Single request permitted for all de minimis transactions.* Because the plan solvency test for *de minimis* mergers and transfers is based on the most recent valuation (without adjustment for intervening *de minimis* transactions), a plan sponsor may submit a single request for a compliance determination covering all *de minimis* mergers or transfers that occur between one plan valuation and the next. However, the plan sponsor must still notify PBGC of each *de minimis* merger or transfer separately, in accordance with § 4231.8. The single request for a compliance determination may be filed concurrently with any one of the notices of a *de minimis* merger or transfer.

(b) *Contents of request—*(1) *General.* A request for a compliance determination concerning a merger or transfer that is not *de minimis* must contain—

(i) A copy of the merger or transfer agreement;

(ii) A summary of the required calculations, including a complete description of assumptions and methods, on which the enrolled actuary based each certification that a plan involved in the merger or transfer satisfied a

plan solvency test described in § 4231.6; and

(iii) For each significantly affected plan, other than a plan that is a significantly affected plan only because the merger or transfer involves a plan that has terminated by mass withdrawal under section 4041A(a)(2) of ERISA, copies of all actuarial valuations performed within the 5 years preceding the date of filing the notice required under § 4231.8.

(2) *De minimis merger or transfer.* A request for a compliance determination concerning a *de minimis* merger or transfer must contain one of the following statements for each plan that exists after the transaction, certified by an enrolled actuary:

(i) A statement that the plan satisfies one of the plan solvency tests set forth in § 4231.6(a), indicating which test is satisfied.

(ii) A statement of the basis on which the actuary has determined that benefits under the plan are not reasonably expected to be subject to suspension under section 4245 of ERISA, including supporting data or calculations, assumptions and methods.

### § 4231.10 Actuarial calculations and assumptions.

(a) *Most recent valuation.* All calculations required by this part must be based on the most recent actuarial valuation as of the date of filing the notice, updated to show any material changes.

(b) *Assumptions.* All calculations required by this part must be based on methods and assumptions that are reasonable in the aggregate, based on generally accepted actuarial principles.

(c) *Updated calculations.* If the actual effective date of the merger or transfer is more than one year after the date the notice is filed with the PBGC, PBGC may require the plans involved to provide updated calculations and representations based on the actual effective date of the transaction.

## PART 4245—NOTICE OF INSOLVENCY

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AUTHORITY: 29 U.S.C. 1302(b)(3), 1426(e).

SOURCE: 61 FR 34115, July 1, 1996, unless otherwise noted.

### § 4245.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to prescribe notice requirements pertaining to insolvent multiemployer plans that are in reorganization.

(b) *Scope.* This part applies to multiemployer plans in reorganization covered by title IV of ERISA, other than plans that have terminated by mass withdrawal under section 4041A(a)(2) of ERISA.

### § 4245.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: employer, ERISA, IRS, multiemployer plan, non-forfeitable benefit, PBGC, person, plan, and plan year.

In addition, for purposes of this part:

*Actuarial valuation* means a report submitted to the plan in connection with a valuation of plan assets and liabilities, which, in the case of a plan covered by subparts C and D of part 4281, shall be performed in accordance with subpart B of part 4281.

*Available resources* means, for a plan year, available resources as described in section 4245(b)(3) of ERISA.

*Benefits subject to reduction* means those benefits accrued under plan amendments (or plans) adopted after March 26, 1980, or under collective bargaining agreements entered into after March 26, 1980, that are not eligible for the PBGC's guarantee under section 4022A(b) of ERISA.

*Financial assistance* means financial assistance from the PBGC under section 4261 of ERISA.

*Insolvency benefit level* means the greater of the resource benefit level or the benefit level guaranteed by the PBGC for each participant and beneficiary in pay status.

*Insolvency year* means insolvency year as described in section 4245(b)(4) of ERISA.

*Insolvent* means that a plan is unable to pay benefits when due during the plan year. A plan terminated by mass withdrawal is not insolvent unless it has been amended to eliminate all benefits that are subject to reduction under section 4281(c) of ERISA, or, in the absence of an amendment, no benefits under the plan are subject to reduction under section 4281(c) of ERISA.

*Reasonably expected to enter pay status* means, with respect to plan participants and beneficiaries, persons (other than those in pay status) who, according to plan records, are disabled, have applied for benefits, or have reached or will reach during the applicable period the normal retirement age under the plan, and any others whom it is reasonable for the plan sponsor to expect to enter pay status during the applicable period.

*Reorganization* means reorganization under section 4241(a) of ERISA.

*Resource benefit level* means resource benefit level as described in section 4245(b)(2) of ERISA.

### § 4245.3 Notice of insolvency.

(a) *Requirement of notice.* A plan sponsor of a multiemployer plan in reorganization that determines under section 4245 (b)(1), (d)(1) or (d)(2) of ERISA that the plan's available resources are or may be insufficient to pay benefits when due for a plan year shall so notify the PBGC and the interested parties, as defined in paragraph (e) of this section. A single notice may cover more than one plan year. The notices shall be delivered in the manner and within the time prescribed in this section and shall contain the information described in § 4245.4.

(b) *When delivered.* A plan sponsor shall mail or otherwise deliver the notices of insolvency no later than 30 days after it determines that the plan is or may become insolvent, as described in paragraph (a) of this section. However, the notice to participants and beneficiaries in pay status may be delivered concurrently with the first benefit payment made more than 30 days after the determination of insolvency.

(c) *Delivery to PBGC—(1) Method of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to

determine permissible methods of filing the notice of insolvency with the PBGC under this part.

(2) *Filing date.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a notice of insolvency under this part was filed with the PBGC.

(d) *Delivery to interested parties—(1) Method of issuance.* The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of issuance of the notice of insolvency to interested parties. In addition to the methods permitted under subpart B of part 4000, the plan sponsor may notify interested parties, other than participants and beneficiaries who are in pay status when the notice is required to be delivered, by posting the notice at participants' work sites or publishing the notice in a union newsletter or in a newspaper of general circulation in the area or areas where participants reside. Notice to a participant shall be deemed notice to that participant's beneficiary or beneficiaries.

(2) *Issuance date.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that the notice of insolvency was issued.

(e) *Interested parties.* For purposes of this part, the term "interested parties" means—

(1) Employers required to contribute to the plan;

(2) Employee organizations that, for collective bargaining purposes, represent plan participants employed by such employers; and

(3) Plan participants and beneficiaries.

[61 FR 34115, July 1, 1996, as amended at 68 FR 61357, Oct. 28, 2003]

**§ 4245.4 Contents of notice of insolvency.**

(a) *Notice to the PBGC.* A notice of insolvency required to be filed with the PBGC pursuant to § 4245.3 shall contain the information set forth below:

(1) The name of the plan.

(2) The name, address and telephone number of the plan sponsor and of the plan sponsor's duly authorized representative, if any.

(3) The nine-digit Employer Identification Number (EIN) assigned by the

IRS to the plan sponsor and the three-digit Plan Identification Number (PIN) assigned by the plan sponsor to the plan, and, if different, the EIN or PIN last filed with the PBGC. If no EIN or PIN has been assigned, the notice shall so indicate.

(4) The IRS key district that has jurisdiction over determination letters with respect to the plan.

(5) The case number assigned to the plan by the PBGC. If the plan has no case number, the notice shall state whether the plan has previously filed a notice of insolvency with the PBGC and, if so, the date on which the notice was filed.

(6) The plan year or years for which the plan sponsor has determined that the plan is or may become insolvent.

(7) A copy of the plan document, including the last restatement of the plan and all subsequent amendments in effect, or to become effective, during the insolvency year or years. However, if a copy of the plan document was submitted to the PBGC with a previous notice of insolvency or notice of insolvency benefit level, only subsequent plan amendments need be submitted, and the notice shall state when the copy of the plan document was filed.

(8) A copy of the most recent actuarial valuation for the plan and a copy of the most recent Schedule B (Form 5500) filed for the plan, if the Schedule B contains more recent information than the actuarial valuation. If the actuarial valuation or Schedule B was previously submitted to the PBGC, it may be omitted, and the notice shall state the date on which the document was filed and that the information is still accurate and complete.

(9) The estimated amount of annual benefit payments under the plan (determined without regard to the insolvency) for each insolvency year.

(10) The estimated amount of the plan's available resources for each insolvency year.

(11) A certification, signed by the plan sponsor (or a duly authorized representative), that notices of insolvency have been given to all interested parties in accordance with the requirements of this part.

(b) *Notices to interested parties.* A notice of insolvency required under

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§ 4245.3 to be given to interested parties, as defined in § 4245.3(e), shall contain the information set forth below:

- (1) The name of the plan.
- (2) The plan year or years for which the plan sponsor has determined that the plan is or may become insolvent.
- (3) The estimated amount of annual benefit payment under the plan (determined without regard to the insolvency) for each insolvency year.
- (4) The estimated amount of the plan's available resources for each insolvency year.

(5) A statement that, during the insolvency year, benefits above the amount that can be paid from available resources or the level guaranteed by the PBGC, whichever is greater, will be suspended, with a brief explanation of which benefits are guaranteed by the PBGC. The following statement may be included as an explanation of PBGC-guaranteed benefits:

Should the plan become insolvent, each participant's benefit guaranteed by the Pension Benefit Guaranty Corporation (PBGC) is determined as follows. Each participant's non-forfeitable monthly benefit payable under the plan at retirement is computed. This benefit is then divided by the participant's years of credited service under the plan. Of the resulting figure (the accrual rate), the first \$5 is guaranteed at 100%. Any additional amount (up to \$15) is either 75% or 65% guaranteed, depending on the past funding practices of the plan. Any remaining amount that exceeds \$20 is not guaranteed. The PBGC guarantees the payment of a monthly benefit equal to this adjusted accrual rate times years of credited service. The PBGC does not guarantee benefits or benefit increases that have been in effect for fewer than 60 months before the plan becomes insolvent or is amended to reduce accrued benefits.

(6) The name, address, and telephone number of the plan administrator or other person designated by the plan sponsor to answer inquiries concerning benefits during the plan's insolvency.

[61 FR 34115, July 1, 1996, as amended at 68 FR 61357, Oct. 28, 2003]

### § 4245.5 Notice of insolvency benefit level.

(a) *Requirement of notice.* Except as provided in paragraph (b) of this section, for each insolvency year the plan sponsor shall notify the PBGC and the

interested parties, as defined in § 4245.3(e), of the level of benefits expected to be paid during the year (the "insolvency benefit level"). These notices shall be delivered in the manner and within the time prescribed in this section and shall contain the information described in § 4245.6.

(b) *Waiver of notice to certain interested parties.* The notice of insolvency benefit level required under this section need not be given to interested parties, other than participants and beneficiaries who are in pay status or are reasonably expected to enter pay status during the insolvency year, for an insolvency year immediately following the plan year in which a notice of insolvency was required to be delivered pursuant to § 4245.3, provided that the notice of insolvency was in fact delivered.

(c) *When delivered.* The plan sponsor shall mail or otherwise deliver the required notices of insolvency benefit level no later than 60 days before the beginning of the insolvency year, except that if the determination of insolvency is made fewer than 120 days before the beginning of the insolvency year, the notices shall be delivered within 60 days after the date of the plan sponsor's determination.

(d) *Delivery to PBGC—(1) Method of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing a notice of insolvency benefit level with the PBGC under this part.

(2) *Filing date.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a notice of insolvency benefit level under this part was filed with the PBGC.

(e) *Delivery to interested parties—(1) Method of issuance.* The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of issuance of the notice of insolvency benefit levels to interested parties. In addition to the methods permitted under subpart B of part 4000, the plan sponsor may notify interested parties, other than participants and beneficiaries who are in pay status or reasonably expected to enter pay status during the insolvency year for which

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the notice is given, by posting the notice at participants' work sites or publishing the notice in a union newsletter or in a newspaper of general circulation in the area or areas where participants reside. Notice to a participant shall be deemed notice to that participant's beneficiary or beneficiaries.

(2) *Issuance date.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that the notice of insolvency benefit levels was issued.

[61 FR 34115, July 1, 1996, as amended at 68 FR 61357, Oct. 28, 2003]

### § 4245.6 Contents of notice of insolvency benefit level.

(a) *Notice to the PBGC.* A notice of insolvency benefit level required to be filed with the PBGC pursuant to § 4245.5(a) shall contain the information set forth below, except as provided in the next sentence. The information required in paragraphs (a)(7) to (a)(10) need be submitted only if it is different from the information submitted to the PBGC with the notice of insolvency filed for that insolvency year (see § 4245.4 (a)(7) to (a)(10)) or the notice of insolvency benefit level filed for a prior year. When any information is omitted under this exception, the notice shall so state and indicate when the notice of insolvency or prior notice of insolvency benefit level was filed.

(1) The name of the plan.

(2) The name, address and telephone number of the plan sponsor and of the plan sponsor's authorized representative, if any.

(3) The nine-digit Employer Identification Number (EIN) assigned by the IRS to the plan sponsor and the three-digit Plan Identification Number (PIN) assigned by the plan sponsor to the plan, and, if different, the EIN or PIN last filed with the PBGC. If no EIN or PIN has been assigned, the notice shall so indicate.

(4) The IRS key district that has jurisdiction over determination letters with respect to the plan.

(5) The case number assigned to the plan by the PBGC.

(6) The plan year for which the notice is filed.

(7) A copy of the plan document, including any amendments, in effect during the insolvency year.

(8) A copy of the most recent actuarial valuation for the plan and a copy of the most recent Schedule B (Form 5500) filed for the plan, if the Schedule B contains more recent information than the actuarial valuation.

(9) The estimated amount of annual benefit payments under the plan (determined without regard to the insolvency) for the insolvency year.

(10) The estimated amount of the plan's available resources for the insolvency year.

(11) The estimated amount of the annual benefit payments guaranteed by the PBGC for the insolvency year.

(12) The amount of financial assistance, if any, requested from the PBGC.

(13) A certification, signed by the plan sponsor (or a duly authorized representative), that notices of insolvency benefit level have been given to all interested parties in accordance with the requirements of this part.

When financial assistance is requested, the PBGC may require the plan sponsor to submit additional information necessary to process the request.

(b) *Notices to interested parties other than participants in or entering pay status.* A notice of insolvency benefit level required by § 4245.5(a) to be delivered to interested parties, as defined in § 4245.3(e), other than a notice to a participant or beneficiary who is in pay status or is reasonably expected to enter pay status during the insolvency year, shall include the information set forth below:

(1) The name of the plan.

(2) The plan year for which the notice is issued.

(3) The estimated amount of annual benefit payments under the plan (determined without regard to the insolvency) for the insolvency year.

(4) The estimated amount of the plan's available resources for the insolvency year.

(5) The amount of financial assistance, if any, requested from the PBGC.

(c) *Notices to participants and beneficiaries in or entering pay status.* A notice of insolvency benefit level required by § 4245.5(a) to be delivered to participants and beneficiaries who are in pay

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status or are reasonably expected to enter pay status during the insolvency year for which the notice is given, shall include the following information:

(1) The name of the plan.

(2) The plan year for which the notice is issued.

(3) A statement of the monthly benefit expected to be paid to the participant or beneficiary during the insolvency year.

(4) A statement that in subsequent plan years, depending on the plan's available resources, this benefit level may be increased or decreased but will not fall below the level guaranteed by the PBGC, and that the participant or beneficiary will be notified in advance of the new benefit level if it is less than his full nonforfeitable benefit under the plan.

(5) The name, address, and telephone number of the plan administrator or other person designated by the plan sponsor to answer inquiries concerning benefits during the plan's insolvency.

[61 FR 34115, July 1, 1996, as amended at 68 FR 61357, Oct. 28, 2003]

### § 4245.7 PBGC address.

See § 4000.4 of this chapter for information on where to file.

[68 FR 61357, Oct. 28, 2003]

### § 4245.8 Computation of time.

The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period for filing or issuance under this part.

[68 FR 61357, Oct. 28, 2003]

## PART 4261—FINANCIAL ASSISTANCE TO MULTIEMPLOYER PLANS

SOURCE: 61 FR 34118, July 1, 1996, unless otherwise noted.

### § 4261.1 Cross-reference.

See § 4281.47 for procedures for applying to the PBGC for financial assistance under section 4261 of ERISA.

## PART 4281—DUTIES OF PLAN SPONSOR FOLLOWING MASS WITHDRAWAL

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AUTHORITY: 29 U.S.C. 1302(b)(3), 1341a, 1399(c)(1)(D), and 1441.

SOURCE: 61 FR 34118, July 1, 1996, unless otherwise noted.

### Subpart A—General Provisions

#### § 4281.1 Purpose and scope.

(a) *General*—(1) *Purpose*. When a multiemployer plan terminates by mass withdrawal under section 4041A(a)(2) of ERISA, the plan's assets and benefits must be valued annually under section 4281(b) of ERISA, and plan benefits may have to be reduced or suspended to the extent provided in section 4281 (c) or (d). This part implements the provisions of section 4281 and provides rules